

### **REMARKS**

The Final Office Action mailed May 17, 2010 and the references cited therein have been carefully considered. Claims 1-28 are now pending, although Claims 19-28 have been previously withdrawn from consideration. By the amendments herein, Applicant has amended the claims to accept the subject matter indicated in the subject Office Action as being allowable. In particular, Claim 1 is hereby cancelled and all the claims previously dependent on Claim 1 are amended to now depend from Claim 4. Additionally, Claims 19-28 which were previously withdrawn are hereby canceled in order to place this application in condition for allowance.

### **Interview Summary**

On May 13, 2010, a telephone interview was conducted between the undersigned, Examiner Alex Efta and his Supervisory Examiner Philip Tucker. The substance of that interview is described in Examiner Efta's Interview Summary mailed May 17, 2010 and which the undersign agrees accurately reflects what was discussed at that time. It should be noted that no agreement was reached in this regard between the Examiner and the undersigned, but nonetheless, Applicant appreciates and would like to thank the Examiner for his kind consideration.

### **Non-Statutory Obviousness-Type Double Patenting**

Claims 1-4, 6 and 13-18 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting over claims 1-11 and 20 of co-pending Application No. 10/576,098 in view of WO 00/50249 to Plaschka et al. and U.S. Patent No. 6,491,324 to Schmitz et al. In this regard, Applicant resubmits a new Terminal Disclaimer herewith in accordance with 37 C.F.R. 1.321(b) and/or (c), as Applicant's previous Disclaimer was disapproved. In particular, PTO form PTO/SB/25 titled 'Terminal Disclaimer To Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application' is used. Also, as the fee under 37 CFR 1.20(d) was previously paid, it is considered by Applicant as being included herein. Thus, Applicant requests reconsideration and withdrawal of the non-statutory obviousness-type double patenting rejection of the claims.

### **Claim Rejections under 35 USC § 103**

In view of Applicant's amendments herein, accepting the subject matter indicated as being allowable by the Examiner, it is believed the pending prior art rejections under 35 USC §103 are rendered moot. Accordingly, Applicant respectfully requests reconsideration and allowance herein of the pending claims.

### **Conclusion**

Entry of the amendments herein and favorable consideration of Claims 2-18 is hereby solicited. In view of the foregoing amendments and remarks, this application should now be in

Applicant: Ludwig Brehm  
Serial No.: 10/587,710  
Docket No.: 1093-160PCT/US  
Response to Final Office Action Mailed April 19, 2010  
Page 8 of 8

condition for allowance. A notice to this effect is respectfully requested. If the Examiner has any questions or suggestions to expedite allowance of this application, the Examiner is cordially invited to contact Applicant's attorney at the telephone number provided.

Respectfully submitted,

/tony a. gayoso/

Tony A. Gayoso

Registration No.: 37,331

Attorney for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791  
(516) 822-3550  
TAG:lg  
337820\_1.DOC